

OIL AND GAS DOCKET NO. 05-0263367

THE APPLICATION OF ALICE ENVIRONMENTAL SERVICES, LP FOR COMMERCIAL DISPOSAL AUTHORITY PURSUANT TO STATEWIDE RULE 9 FOR THE RIDGE SWD LEASE, WELL NO. 1, BALD PRAIRIE (TRAVIS PEAK) FIELD, ROBERTSON COUNTY, TEXAS

HEARD BY: Richard D. Atkins, P.E. - Technical Examiner
Mark J. Helmueller - Legal Examiner

AMENDED PFD REVIEWED BY: James M. Doherty - Legal Examiner

APPEARANCES:

REPRESENTING:

APPLICANT:

Clay Nance
Jay Stewart
Bill Friend
Mark L. McCoury
Larry E. Carlisle

Alice Environmental Services, LP

PROTESTANTS:

John G. Soule
Mack L. McCullough
Alan T. Cessac
Sandra Cessac

Mack L. McCullough and Alan Cessac

James H. McCullough
Sherry Chandler

Sherry Chandler, et al

Russell Devorsky

District 57 State Representative,
Jim Dunnam

Judge Jan A. Roe

Robertson County

Richard McCullough
Cindy Sanders
Billy Atomanczyk

Self
Self
Self

OIL AND GAS DOCKET NO. 05-0263367

John T. and Virginia Hurley Selves

PROCEDURAL HISTORY

Application Filed:	September 16, 2009
Protest Received:	September 29, 2009
Request for Hearing:	October 5, 2009
Notice of Hearing:	October 29, 2009
Hearing Held:	February 11 & 12, 2010
Transcript Received:	March 3, 2010
Record Closed:	March 24, 2010
Proposal for Decision Issued:	May 26, 2010
Record Reopened:	July 7, 2010
Reopened Record Closed:	October 9, 2010
Amended PFD Issued:	November 17, 2010

AMENDED PROPOSAL FOR DECISION

BACKGROUND

On July 6, 2010, at the open conference for the Commissioners to consider the examiners' recommendations in this docket, the Commissioners remanded this matter back to the examiners for the limited purpose of developing further evidence regarding the abandoned well location that is approximately 1,800 feet to the southeast of the proposed injection well. The RRC District Office performed an inspection on September 1, 2010 and submitted an Inspection Report that confirmed the existence and location of an abandoned well.

The examiners have taken official notice of the inspection report and a historical map in the Commission's records which further identifies the abandoned well and its location. The parties were notified of the taking of official notice and were provided an opportunity to request a re-opened hearing. No party requested a re-opened hearing. The examiners issue this amended Proposal for Decision to address the additional evidence regarding the abandoned well location.

STATEMENT OF THE CASE

Alice Environmental Services, LP ("Alice") requests commercial disposal authority pursuant to Statewide Rule 9 for the Ridge SWD Lease, Well No. 1, Bald Prairie (Travis Peak) Field, Robertson County, Texas.

Notice of the subject application was published in the *Bryan-College Station - The Eagle*, a newspaper of general circulation in Robertson County, on September 16, 2009. Notice of the application was sent to the Robertson County Clerk, offset operators within ½ mile and to the surface owners of each tract which adjoins the disposal tract on

OIL AND GAS DOCKET NO. 05-0263367

September 14, 2009.

This application is opposed by the Robertson County Judge and Commissioner's Court, State Representative Jim Dunnam, several surface owners of offset tracts, and numerous other residents of the Ridge community where the subject disposal well is located.

DISCUSSION OF THE EVIDENCE

Applicant's Evidence

The proposed Ridge SWD Lease, Well No. 1, will be located on a 9.961 acre tract adjacent to U.S. Highway 79 owned by Alice. The tract lies within the unincorporated City of Ridge, which is situated thirteen miles northeast of Franklin, Texas. Alice proposes that the well be drilled through the Buda, Georgetown and Edwards formations to a maximum depth of 7,000 feet. It is proposed that the well will have 1,975 feet of 13 3/8" surface casing set with cement circulated from the casing shoe to the ground surface. The 7" longstring casing will be set at the estimated total depth of 7,000 feet with cement circulated from the casing shoe to the ground surface (See attached Alice Exhibit No. 27 - Wellbore Diagram). Alice has agreed to run a cement bond log to confirm the quality of the cement behind the long string of casing.

The Texas Commission on Environmental Quality ("TCEQ") recommends that usable-quality ground water be protected through the base of the Wilcox Sands, estimated to occur at a depth of 1,925 feet below the land surface. There is over 2,300 feet of impermeable shale between the top of the proposed injection interval at 5,800 feet and the base of usable quality water at 1,925 feet. Alice submitted a TCEQ letter dated September 9, 2009, which stated that injection of produced water into the proposed injection interval will not harm usable quality water. In addition, Alice submitted a tabulation by the Texas Water Development Board showing that there were only eight freshwater wells located within one mile of the proposed injection well. The shallowest and deepest water wells were 210 feet and 530 feet in depth, respectively.

The proposed injection will be through 4 1/2" tubing set on a packer at approximately 5,800 feet, but no higher than 100 feet above the top of the injection interval. The proposed injection interval is 5,800 feet to 7,000 feet, which includes the Buda formation at 5,800 feet, the Georgetown formation at 5,900 feet and the Edwards formation at 6,400 feet. The proposed maximum injection volume is 20,000 BWPD, with an estimated average of 12,000 BWPD. The proposed maximum surface injection pressure is 2,900 psig.

There are no wells located within the 1/4 mile radius of review for the proposed disposal well. Within a 1/2 mile radius of review, there is one abandoned well location that is located approximately 1,800 feet to the southeast of the proposed injection well. Alice's expert engineering witness reviewed all of the wells within a 2 mile radius and approximately 20 other wells outside of the 2 mile radius. The expert found that the

OIL AND GAS DOCKET NO. 05-0263367

shallowest production was below 13,000 feet and that there were no potentially productive formations above 13,000 feet. As a result, there is more than 6,000 feet of strata above any productive zone and the base of the proposed injection interval. In addition, the proposed disposal zones correlated in all of the well logs reviewed, indicating that they were blanket formations across a large area. The expert believed that these facts clearly indicated that the injected fluids would be confined to the proposed injection interval.

Alice is the surface owner of the 9.961 acre tract where the proposed disposal facility will be located and is a wholly owned subsidiary of Forbes Energy. Forbes Energy operates other commercial disposal facilities throughout Texas with two facilities located in Harrison County. Alice plans to use the proposed disposal well for its own disposal needs, but it will be available for use by other salt water disposal haulers.

The 9.961 acre tract and the area surrounding the proposed injection facility is located within the unincorporated City of Ridge. Alice submitted a plat depicting the 9.961 acre disposal tract within the street and lot layout of the unincorporated city of Ridge. The only street on the plat that actually exists is Brown Street, which is currently called Hurley Road. Alice urged that the unincorporated city of Ridge has been abandoned and that there are no existing street easements which encumber the property.

Access to the disposal facility will be off of U.S. Highway 79, which is a paved two lane public highway, onto Hurley Road, which runs along the southwest side of the disposal tract. Hurley Road intersects U.S. Highway 79 from the north and is directly offset by Reeves Road, which intersects U.S. Highway 79 from the south.

Alice submitted a 2007 TXDOT Traffic Volume Map showing a 24 hour vehicle count on U.S. Highway 79 of 5,700 vehicles adjacent to the proposed facility. This count was in contrast to a 7,100 vehicle count near Franklin, Texas to the southwest and a 9,400 vehicle count near Jewett, Texas to the northeast. Alice has met with TXDOT to discuss the entrance and exit of 18-wheeler trucks to U.S. Highway 79, but has not yet received a permit. Alice also submitted a FEMA Flood Plain Map showing that the proposed facility was not close to any known flood hazard areas.

At an average injection rate of 12,000 BWPD, there will be approximately 70 to 80 loads per day delivered to the facility. The facility will be constructed to accommodate numerous trucks at any one time and will be large enough to allow trucks access without waiting on Hurley Road or Highway 79. The surface facility will be manned 24 hours per day. A firewall will be constructed around the entire facility to contain any spilled fluids. The facility will be equipped with an H₂S monitoring alarm system. The tanks will be a closed system to properly contain any H₂S gas. The tanks will be grounded to mitigate any lightening strikes and will be equipped with high water level switches to prevent overflows. Additionally, the facility will comply with all of the permit conditions requested by the Commission staff.

Alice asserts additional disposal capacity in Robertson County is necessary to

OIL AND GAS DOCKET NO. 05-0263367

address disposal of saltwater produced by wells in the area, most of which are located east and south of the proposed injection well. A drilling permit query of the RRC online system showed that 75 new drilling permits were issued in Robertson County from July 2009 through January 2010. In addition, a production query of the RRC online system showed that 515 MBO, 356 MMCF of casing head gas, 104 BCFG and 4.4 MBC was produced in Robertson County from July 2009 through January 2010.

Alice's division manager opines that the existing commercial disposal capacity in the area is inadequate to handle the currently produced water. He stated that there is only one commercial disposal well, operated by Basic Energy, which no longer accepts saltwater from outside haulers. Two other private disposal wells are operated by XTO Energy and Encana, located in Robertson County. All three of the wells were operating at or near permitted injection capacity according to Alice's division manager.

Alice has a yard located near Franklin, Texas. It currently hauls approximately 20 loads of saltwater per day from wells in the area to disposal wells located near Bryan or Madisonville, Texas, a 3 ½ hour round trip. A facility located at the proposed location, would reduce the round trip haul time to 1 ½ hours.

Alice submits that it has the expertise to build and manage the proposed facility. Alice has a current approved Form P-5 (Organization Report), has posted financial assurance in the form of a \$25,000 bond and has no pending Commission enforcement actions. Alice also carries a \$1 million general liability and a \$5 million umbrella insurance policy.

Protestants' Evidence

Protestants believe that the application for the proposed commercial disposal well and facility should be denied. Protestants' evidence fell into several general categories: 1) potential of pollution of surface or subsurface waters; 2) noise, lighting, dust and H2S odor nuisances which would result from the operation of the facility; 3) possible explosions at the facility due to lightening strikes; and 4) increased heavy truck traffic on U.S. Highway 79 at the intersection of Hurley and Reeves Roads, causing county road deterioration and public safety issues.

Robertson County's Case

Robertson County Judge Jan A. Roe submitted Resolution No.03-2010 on behalf of the Robertson County Commissioners Court, a copy of which is attached to the proposal for decision for reference (See attached Robertson County Exhibit No. 1 - Resolution No.03-2010). The February 8, 2010, resolution opposes the proposed saltwater disposal well in Ridge, Texas. The Commissioner's Court and County Judge believe that the rural community of Ridge will be subjected to unreasonable harm and be adversely affected should the permit to construct a saltwater disposal facility at the proposed location be granted. The Robertson County Commissioners Court voted unanimously to oppose the

OIL AND GAS DOCKET NO. 05-0263367

proposed permit at the suggested location. The Commissioners Court suggests an alternative undeveloped area be considered.

Robertson County has a population of approximately 16,000. The county has four incorporated areas that encompass about 6,000 residents. The remaining 10,000 residents live in 10 unincorporated rural communities. Ridge is one of those communities that was established by plat. Judge Roe researched the Commissioners Court's records but was unable to find that the county had abandoned any of the easements for the roadways designated on the plat for the city of Ridge. She does not believe title to the roadways could be transferred without county abandonment.

The Robertson County Water Supply Corporation, which provides water to rural communities such as Ridge, has plans for expansion on the property located adjacent to the proposed injection facility. Because growth and expansion in this rural area is currently planned, Judge Roe believes the facility is located at the wrong place and time. Judge Roe questioned Alice's insinuation that Ridge was a growing industrial area, as she felt that it was a rural community. There are two designated industrial areas in Robertson County and Ridge is not one of them.

Judge Roe also questioned the testimony about increased oil and gas drilling permit activity. She believes that the oil and gas production and exploration in Robertson County topped out about a year ago. The appraisal company that performs the mineral appraisals for Robertson County had advised her in late summer to expect a \$750 million to \$1 billion loss in mineral values in her upcoming budget year. Any implication that there is a major upswing in oil and gas production in Robertson County is therefore misleading.

Judge Roe notes that Robertson County has some of the deadliest stretches of highway in Texas. It also has one of the highest traffic fatality rates. In many of the fatal accidents a tractor trailer was involved. The ridge running perpendicular through U.S. Highway 79 is adjacent to the proposed disposal property creating a dangerous situation, as traffic from the north cannot be seen over the ridge.

Judge Roe believes that another safety concern is lightning strikes. She stated that there were several saltwater disposal wells already in existence in and around the Robertson County area. Of those, she knew that two of the facilities had encountered lightning strikes resulting in explosions and on one occasion the loss of life.

In summary, Judge Roe stated that the county is not opposed to a disposal facility, but wants to make sure it is in the right area. The county does not believe this facility is in the public interest because it is in the middle of a rural subdivision. The county is specifically concerned that the entrance to the facility is in close proximity to a ridge that obscures oncoming traffic from the north. In her view, the proposed location is contrary to the public interest, the public safety and the welfare of the citizens of Robertson County.

Representative Dunnam's Case

OIL AND GAS DOCKET NO. 05-0263367

Russell Devorsky, Chief of Staff for State Representative Jim Dunnam, made a statement on behalf of Representative Dunnam in opposition to the proposed facility. The Office of the State Representative fully supports the position of Judge Roe and the Commissioners Court.

Mr. Devorsky related that U.S. Highway 79 is a two-lane road with improved shoulders with an open ditch area on either side of the roadway. It has a lot of traffic on it and there is no center turn lane, additional side road or improved shoulder for the trucks to use that would support their weight turning into this proposed disposal site. He recalled that many photos presented of U.S. Highway 79 showed a ridge that would literally create a blind spot for diesel trucks that will be cresting the ridge at 70 miles an hour.

Mr. Devorsky shared the fact that his sister was killed and his niece left in a coma two years ago in a traffic accident on U.S. Highway 79 in at a site that is extremely similar to this one at Ridge. Even with so many wrecks happening in and around Robertson County, the nearest Level 2 hospital is 100 miles away. The nearest major Level 1 trauma center is located in either Dallas or Houston, Texas. He believes safety is paramount and that the people of rural Texas deserve the same consideration as urban citizens for the health and safety of their neighborhoods.

Mr. Devorsky believes that the plat of the City of Ridge that was filed at the courthouse was an official record and Alice could not enact adverse possession against a governmental entity. If the City of Ridge were non-existent then Robertson County would have inherited the easements. Any easement rights would remain until explicitly abandoned by the Commissioners Court.

Mr. Devorsky was also concerned that the initial notice was published in a Bryan-College Station newspaper and the secondary notice was put in a Robertson County newspaper. He stated that there were at least five newspapers within Robertson County and he believed that there was an inconsistency in that the Bryan newspaper was used for one general notification and then a separate Robertson County newspaper was used for the other general notification.

McCullough's Case

Protestant Mack L. McCullough has resided in the Ridge community for more than 77 years. He lives with his wife on property across U.S. Highway 79 adjacent to and southeast of the proposed disposal facility. His residence is located approximately ¼ mile from the facility. Mr. McCullough submitted several photos showing the ridge across U.S. Highway 79 and the intersection of Hurley and Reeves Road with U.S. Highway 79.

Mr. McCullough is concerned about the addition of 75 to 80 trucks that will be entering and exiting the proposed facility at the intersection of U.S. Highway 79 and Hurley Road. He stated that there is already heavy traffic entering and exiting Reeves Road from U.S. Highway 79 which is directly across from Hurley Road. He knows that there are 75

OIL AND GAS DOCKET NO. 05-0263367

to 100 vehicles using Reeves Road to travel to the Encana Gas Plant. In addition, Reeves Road is a dead-end road, so what goes in has to turn around and come back out.

Mr. McCullough is also concerned about a potential threat to his fresh water. He has several water wells located on his property and knows that there are many other fresh water wells used by members of the Ridge community. He stated that the abandoned location shown on Alice's map just outside the ¼ mile area of review is actually an old unplugged well that was drilled back in the early 1930's. His great uncle worked on drilling the well which had a wooden derrick and was powered by steam.

One of Mr. McCullough's witnesses testified that the unplugged well was located on property owned by Mr. Ron Dornack. He believed the well was 5,000 feet to 6,000 feet in depth. The witness also submitted a petition opposing the location of the proposed disposal facility that was signed by more than 50 members of the Ridge community.

Cessacs' Case

Protestants Alan T. and Sandra Cessac live on property immediately adjacent to the proposed disposal facility. Mr. Cessac operates a small welding shop with several employees which provides services to the oil and gas industry. The Cessac's home is approximately 350 feet from the proposed disposal well. It would be located approximately 200 feet from the proposed facility and tank battery.

Mr. Cessac stated that his primary business was working on drilling rigs. He is aware of the vulnerability of drilling rigs to lightning strikes. He is also aware that tank facilities can be struck by lightning and described a lightning strike at a commercial disposal well facility in August, 2009. The resulting explosion and fire destroyed at least two 500 barrel storage tanks and a truck and was felt by his family and other residents of Ridge more than six miles from the site. A similar incident at the proposed Alice facility would destroy his home and business and would threaten the lives of his family and employees.

Mr. Cessac was also concerned that an Atmos Pipeline easement ran through his property and the middle of the proposed disposal tract. He is worried that there is a safety hazard associated with locating surface equipment and truck driveways near a gas transmission line.

Mr. Cessac stated that the entrance to his property was just northeast of the proposed disposal facility and immediately southwest of the ridge across U.S. Highway 79. One of his employees was seriously injured as she was turning into his property. He has also witnessed many near misses as approaching vehicles go off the side of the road or veer over into the oncoming traffic lane to avoid a collision.

Statements in Opposition

OIL AND GAS DOCKET NO. 05-0263367

Protestants Billy Atomanczyk, Richard McCullough, Sherry Chandler and Virginia Hurley all made statements in opposition to the proposed facility and well. Collectively, the testimony and statements in opposition to the facility assert that the proposed commercial disposal facility will have adverse effects on traffic safety, property values and the quality of life in and around the Ridge area. Several individuals expressed concerns about their safety by a potential release of H₂S gas. Since the proposed injection interval, at 5,800 feet, is 200 feet above the possible total depth of the unplugged well, many protestants felt that the proposed disposal operations would threaten contamination of both surface and subsurface waters. They all request that the Commission consider these issues in determining whether the proposed facility is in the public interest.

RRC District Inspection Report

The RRC District Inspection Report confirmed that the abandoned location shown on RRC GIS Maps contained in Alice's Exhibit No. 1 was, in fact, an abandoned unplugged well. The District Inspector found a 10 inch open pipe with external pipe threads protruding approximately 1 inch out of the ground. In addition, he discovered the remains of an old pit next to the well that was approximately 20 feet by 50 feet in size. The well appeared to be unplugged, as there was no evidence of a cement surface plug and no steel plate had been welded across the top of the casing.

The only reference to a depth for the well was found on a RRC historical microfiche map of the north half of Robertson County (See attached Retired Map No. 394). This map shows the location as the C. H. Scheske Lease, Well No. 17, operated by Bolt & Keyser. The well is located just outside the ¼ mile area of review and the permitted depth is listed as 5,300 feet.

EXAMINERS' OPINION

The examiners recommend that the application be denied as Alice has not established that the proposed facility is in the public interest as required by §27.051 of the Texas Water Code.¹ Specifically, Alice failed to establish the need for a facility at the proposed location to support development of oil and gas resources in the area. Members of the community of Ridge, Representative Dunnam, County Judge Roe and the County Commissioners Court, while not opposed to an additional disposal facility in Robertson County, are all in unanimous agreement that the disposal site proposed by Alice at this specific location is contrary to the public interest due to safety concerns from the operation of the facility and traffic. Additionally, the examiners believe the presence of an unplugged well just outside of the ¼ mile area of review which may have penetrated the disposal interval poses a potential threat of pollution to surface and subsurface usable quality water. The unplugged well is a potential conduit for the migration of injected fluids into usable

¹ Because the examiners recommend denial of the application based on the failure to meet the public interest requirement of Texas Water Code §27.051(a), the question of whether any road or pipeline easements preclude development of the facility in the manner proposed by Alice is not addressed.

OIL AND GAS DOCKET NO. 05-0263367

quality water bearing formations and to the surface.

This case is very similar to a previous application for a commercial disposal permit which was denied by the Commission for the failure to meet the public need requirements under §27.051(a) of the Texas Water Code. In Oil and Gas Docket No. 09-0251512: *The Application of WEC, Inc. for a Commercial Permit to Dispose of Oil and Gas Waste by Injection Into a Porous Formation Not Productive of Oil or Gas, Guru SWD Lease Well No. 1, Newark, East (Barnett Shale) Field, Bosque County, Texas* (Final Order Entered May 29, 2008) the Commission found that applicant failed to provide sufficient evidence to establish a current general industry need for the proposed well at the proposed location. WEC's evidence included a summary of recent drilling permits issued for wells in the area, testimony of salt water hauling companies on the potential use of the facility, and executory contracts between WEC and salt water hauling companies showing the potential use of the facility. Additionally, the WEC application was opposed by numerous local residents of the rural community, the adjacent landowners, the Bosque County Judge, and the Bosque County Commissioner's Court due to concerns regarding public safety and traffic.

The examiners recommended a finding in *WEC* that the evidence on industry need was sufficient to satisfy the public interest requirement, however, the Commissioners found that the evidence did not satisfy the standard. Accordingly, the Final Order in *WEC* included three specific subfindings holding: 1) that evidence regarding the number of drilling permits issued was not sufficient to establish a current general industry need; 2) testimony of salt water hauling companies regarding potential use and unavailability of other commercial disposal facilities was not sufficient to establish a current general industry need; and 3) that executory contracts regarding potential use of the facility was not sufficient to establish general industry need.

The evidence presented by WEC on industry need closely parallels the evidence presented in the Alice Ridge SWD Lease, Well No. 1, application. However, Alice presented evidence focused on only two of the three issues identified in *WEC*. First, Alice identified additional permitting activity and recent production in Robertson County as evidence that current development and production require more disposal capacity. Second, Alice pointed out that it currently hauls 20 loads, or approximately 2400 barrels of salt water daily to a facility in Bryan or Madisonville because the three currently permitted commercial disposal wells in Robertson County are not available for public use.

Comparing this evidence to that presented in the *WEC* case shows that the evidence presented by Alice regarding general industry need is less persuasive than the evidence rejected in the *WEC* case. First, the analysis of commercial salt water disposal facilities presented by Alice was limited to the three wells located in Robertson County. Commission records show that in the counties adjacent to Robertson County, there are currently 23 commercial disposal well permits issued. Alice did not reference, or otherwise address whether any of the commercial disposal wells in the general area were operating

OIL AND GAS DOCKET NO. 05-0263367

at capacity. Accordingly, Alice's analysis is even less complete than the similar type of analysis rejected in the *WEC* case.

Second, no other salt water haulers or operators of wells in the area made statements or presented evidence that there was an industry need for a disposal well at this location. The only evidence on need was unsupported testimony from Alice's manager that it was hauling 20 loads daily to Bryan or Madisonville. Again, the evidence in *WEC* was superior to that presented by Alice, as there were multiple witnesses from unaffiliated parties, as well as executed contracts supporting the potential use of the facility as opposed to testimony solely from applicant's manager.

In sum, it appears that the evidence presented by Alice supports a specific need for its salt water hauling operations, as opposed to a general industry need for additional disposal capacity in the area. The examiners therefore conclude, if the evidence in *WEC* was not sufficient to establish a general industry need, then Alice's evidence in this case is not sufficient to establish a general industry need for the Ridge SWD Lease, Well No. 1, at the proposed location.

Additionally, similar to the *WEC* case, a primary concern of all who opposed the Alice application is the increased truck traffic on and along U.S. Highway 79 and at the intersection of Hurley and Reeves Roads that would result from use of the proposed disposal facility. The issue of the suitability of this site based on traffic studies was raised by Alice in its application when it presented evidence from a 2007 TXDOT Traffic Volume Map showing a 24 hour vehicle count on U.S. Highway 79 regarding the number of vehicles in the area. However, Alice did not present a traffic safety analysis or address other traffic conditions in the area identified by county officials and local residents.

In *Texas Citizens for a Safe Future & Clean Water v. Railroad Commission*, 254 S.W.3d 492 (Tex.App.-Austin 2007, pet. pending), the Austin Court of Appeals held that the Commission is required to consider traffic safety issues as part of the "public interest" inquiry under §27.051 of the Texas Water Code. This litigation is now pending on petition for review to the Texas Supreme Court. Because this issue was raised by Alice in its application, and contested by protestants, the examiners believe that it is prudent to consider the issue in this docket, even though the decision in the *Texas Citizens* case is still before the Texas Supreme Court. The examiners' consideration of the issue is not to be taken, however, as a position of the examiners or the Railroad Commission on the legal issues still pending on petition for review before the Texas Supreme Court.

After considering the evidence in this case, in the absence of any official traffic study, the testimony from the county officials and local citizens as to the conditions encountered on U.S. Highway 79 in the area of the proposed facility must prevail. The proposed Hurley Road turnoff to the proposed disposal facility is less than 500 feet south of a ridge which obscures oncoming traffic from the north. Alice's own witnesses presented conflicting testimony regarding this issue. One witness stated that "*there is at least ½ mile visibility in each direction along U.S. Highway 79*" and another witness stated

OIL AND GAS DOCKET NO. 05-0263367

that “the entrance to the proposed disposal facility is 500 feet away from the alleged visibility ridge”. Accordingly, the examiners conclude that Alice has not refuted the public safety issues concerning traffic and roadway conditions on U.S. Highway 79 raised by the protestants.

Finally, the examiners are also concerned that disposal operations at the proposed location could pose a potential threat to usable quality water resources in the vicinity. The record shows that the abandoned well location shown on Alice’s map just outside the ¼ mile area of review is actually an old unplugged well that was drilled back in the early 1930’s to an unknown depth. Although the permitted depth appears to be 5,300 feet on a RRC historical microfiche map, there is no evidence concerning the final drilled depth. Since the proposed injection interval, at 5,800 feet, could be within the total depth of the unplugged well, the proposed disposal operations could possibly threaten contamination of both surface and subsurface waters.

In reviewing the record in this case, the examiners conclude that the proposed well at the proposed location is not in the public interest as required under §27.051(a) of the Texas Water Code. Accordingly, the examiners recommend that the application be denied and that the Commission adopt the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Notice of this application and hearing was provided to all persons entitled to notice at least ten (10) days prior to the date of the hearing.
2. Notice of the subject application was published in the *Bryan-College Station - The Eagle*, a newspaper of general circulation in Robertson County, on September 16, 2009. Notice of the application was sent to the Robertson County Clerk, offset operators within ½ mile and to the surface owners of each tract which adjoins the disposal tract on September 14, 2009.
3. Alice failed to establish that the proposed injection into the Ridge SWD Lease, Well No. 1, would not pose a threat of pollution to surface or subsurface usable quality waters.
 - a. The TCEQ recommends that usable-quality ground water be protected through the base of the Wilcox Sands, estimated to occur at a depth of 1,925 feet below the land surface.
 - b. The abandoned location shown on Alice’s map just outside the ¼ mile area of review is actually an old unplugged well that was drilled in the early 1930’s. Although the permitted depth appears to be 5,300 feet on a RRC historical microfiche map, there is no evidence concerning the final drilled depth.
 - c. The well has ten inch diameter pipe with external pipe threads that

OIL AND GAS DOCKET NO. 05-0263367

extends approximately 1 inch above ground level and is of an unknown depth. In addition, there is the remains of an old pit next to the well that was approximately 20 feet by 50 feet in size.

- d. The well appeared to be unplugged, as there was no evidence of a cement surface plug and no steel plate had been welded across the top of the casing.
 - e. Since the proposed injection interval, at 5,800 feet, could be within the total depth of the unplugged well, the proposed disposal operations could possibly threaten contamination of both surface and subsurface waters.
4. Alice failed to demonstrate that the proposed disposal well is in the public interest as required under Texas Water code §27.051(a).
- a. The evidence in the record regarding the number of drilling permits and production of wells in Robertson County is not sufficient to establish a current general industry need for the proposed facility at the proposed location. There was no evidence submitted that produced water resulting from the issuance of these permits is not being accommodated by the existing disposal capacity.
 - b. The testimony regarding Alice's potential use of the facility and the unavailability of other commercial disposal facilities in Robertson county are not sufficient to establish a current general industry need for the proposed facility at the proposed location. All evidence on the need issue came from applicant's own witness and no other operator or saltwater hauler was presented to testify about an industry need.
 - c. The appraisal company that performs the mineral appraisals for Robertson County is expecting a \$750 million to \$1 billion loss in mineral values in the upcoming budget year.
5. Installation and use of the proposed disposal well will result in a heavier volume of truck traffic along U.S. Highway 79 at the intersection of Hurley and Reeves Roads and will potentially have an adverse impact on traffic conditions in the area of the disposal well.
- a. U.S. Highway 79 is a two-lane highway that has a posted speed limit of 70 miles per hour, little or no shoulders and is presently used by approximately 6,000 vehicles daily.
 - b. The Hurley Road turnoff to the proposed disposal facility is less than 500 feet south of a ridge which obscures oncoming traffic from the north.

OIL AND GAS DOCKET NO. 05-0263367

- c. There is already heavy traffic entering and exiting Reeves Road from U.S. Highway 79 which is directly across from Hurley Road. There are 75 to 100 vehicles per day using Reeves Road to travel to the Encana Gas Plant and Reeves Road is a dead-end road, so what goes in has to turn around and come back out.

CONCLUSIONS OF LAW

1. Proper notice was issued in accordance with the applicable statutory and regulatory requirements.
2. All things necessary to give the Railroad Commission jurisdiction to consider this matter have occurred.
3. The applicant has not complied with the requirements for approval set forth in Statewide Rule 9 and the provisions of §27.051 of the Texas Water Code.
 - a. Alice failed to meet its burden of proof to establish that a proposed commercial disposal facility is in the "public interest" as required under Texas Water Code §27.051(b)(1).
 - b. Alice failed to show that the use of the proposed commercial disposal facility would not cause pollution of surface water or fresh water strata as required under Texas Water Code §27.051(b)(3).

EXAMINERS' RECOMMENDATION

Based on the above findings of fact and conclusions of law, the examiners recommend that the application of Alice Environmental Services, LP for commercial disposal authority pursuant to Statewide Rule 9 for the Ridge SWD Lease, Well No. 1, be denied.

Respectfully submitted,

Richard D. Atkins, P.E.
Technical Examiner

James M. Doherty
Legal Examiner